

There is, however, a very decided opinion expressed by the learned judge, who delivered the opinion of this court, in *Tiernan vs. Poor and wife*, that the contract by which the separate estate of a married woman is attempted to be charged, must be shown to be within the limits of her *jus disponendi*, and it is not very clearly seen how this can be done, unless it be also shown that she is contracting for the direct purpose of charging such separate estate.

The case of *Gray vs. Cook*, 12 G. & J., 236, relates particularly and exclusively to the degree of the proof, which it is necessary to produce, of the intention of the wife to pledge her separate estate. There is certainly nothing in that case from which it can be fairly inferred, that the contract of a *feme covert* will be enforced against her separate estate, unless it is shown that she intended to charge it.

It would seem, therefore, in this case, that before these parties can succeed in their application to have the proceeds of the land which has been sold under the decree of this court, (or that portion of it to which Mrs. Hall, is entitled,) charged with the payment of their claims, they must show, *first*, that her interest in the land was part of her trust estate; and, secondly, that she designed to charge it with such payment.

This land was purchased by, and conveyed to Mrs. Hall, during her coverture; notwithstanding which the conveyance is good, there being no act declaring the dissent of the husband, nor a waiver or disagreement thereto by the wife, after his death. 2 *Kent's Comm.*, 150, *lecture 28*.

The property embraced in the marriage settlement was personal, merely; and for that reason, as well as because the settlement was executed long prior to the deeds conveying the land to her, the settlement could not comprehend the latter. Upon the face of the instruments, therefore, the property, the proceeds of which are sought to be affected by these proceedings, constituted no part of the trust estate; and although the marriage settlement provided for a sale of the property embraced in it, and a reinvestment of the proceeds in other property or funds, there is nothing in this case to show such sale and reinvestment,